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FILED
04/07/2023
Sara Calkins
CLERK
Montana Water Court
STATE OF MONTANA
By: D'Ann CIGLER
43B-0885-R-2022
Lambert, Kathryn
3.00

MONTANA WATER COURT, YELLOWSTONE DIVISION
YELLOWSTONE RIVER ABOVE AND INCLUDING BRIDGER CREEK BASIN
BASIN 43B
PRELIMINARY DECREE

CLAIMANTS: Jean Keffeler; David Stanley

CASE 43B-0885-R-2022
43B 30109304

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusions of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days to be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must mail a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

MASTER'S REPORT

This claim appeared in the Preliminary Decree with an issue remark concerning the volume. The issue remark was not addressed through the objection process. The Water

Court is required to resolve the issue raised by an issue remark. Section 85-2-248, MCA.

Under Section 85-2-248(3), MCA, information in the claim file or other information obtained by the Court can be reviewed to determine if it provides a sufficient basis to resolve the issue raised by a remark and the Court can provide the claimants an opportunity to file additional information or evidence. On December 12, 2022 the Order Consolidating Case And Setting Scheduling Conference was entered setting a scheduling conference on January 17, 2023. Claimants Jean Keffeler and David Stanley did not appear. The January 17, 2023 Court Minutes, Order Entering Defaults, and Order Setting Deadline For Claimants To Show Cause Why Claim Should Not Be Amended Pursuant To 85-2-248(9)(a), MCA includes the following:

ORDERED that the defaults of Jean Keffeler and David Stanley are ENTERED.

Under Section 85-2-248(9)(a), MCA, when a claimant fails to comply with an Order issued by the Water Court concerning resolution of an issue remark, the Court can amend the claim to conform it to information in the claim file such as the examination information which resulted in the addition of the issue remark to the abstract of the claim.

The Preliminary Decree states that the volume is 5.00 acre feet. The Preliminary Decree includes the following issue remark:

THE CLAIMED VOLUME APPEARS TO BE EXCESSIVE FOR THE CLAIMED PURPOSE. AVAILABLE DATA SUPPORT A VOLUME OF 2.75 ACRE-FEET.

Therefore, it is

ORDERED that the deadline for Jean Keffeler and David Stanley to show cause in writing why the Court should not proceed with amending claim 43B 30109304 by reducing the volume to 2.75 acre feet pursuant to section 85-2-248(9)(a), MCA, is **February 17, 2023**. If no additional information is filed by this deadline, the Court will proceed with amending the claim as detailed above.

Nothing was filed. These documents are viewable in the Court's FullCourt Enterprise case management system.

APPLICABLE LAW

"All issue remarks to claims that are not resolved through the filing of an objection as provided in 85-2-233 must be resolved as provided in this section." Section 85-2-248(2), MCA.

A properly filed Statement of Claim for Existing Water Right is prima facie proof of its content pursuant to section 85-2-227, MCA. This prima facie proof may be contradicted and overcome by other evidence that proves, by a preponderance of the evidence, that the

elements of the claim do not accurately reflect the beneficial use of the water right as it existed prior to July 1, 1973. This is the burden of proof for every assertion that a claim is incorrect including for claimants objecting to their own claims. Rule 19, W.R.Adj.R.

FINDINGS OF FACT

1. The Preliminary Decree states that the volume is 5.00 AC-FT. The volume should be 2.75 AC-FT. The volume issue remark should be removed as addressed and resolved.

2. The Preliminary Decree also includes the following notice remark:

THIS EXEMPT CLAIM WAS FILED ON 9/2/2016. THIS CLAIM NUMBER WAS NOT INCLUDED IN THE BASIN 43B DECREE ISSUED 1/16/1985.

This remark should be removed as having served its notice purpose.

CONCLUSION OF LAW

The Statement of Claim is sufficient to resolve the issue remark without evidentiary hearing. Sections 85-2-248(3) and (9), MCA.

RECOMMENDATIONS

Based upon the above Findings of Fact and Conclusion of Law, this Master recommends that the Court make the changes specified in the Findings of Fact to correct the Preliminary Decree for this Basin. A Post Decree Abstract of Water Right Claim is served with this Report to confirm the recommended changes have been made in the state's centralized record system.

ELECTRONICALLY SIGNED AND DATED BELOW

Service via USPS Mail:

Jean Keffeler
David Stanley
PO Box 1377
Livingston, MT 59047

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POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
YELLOWSTONE RIVER, ABOVE & INCLUDING BRIDGER CREEK
BASIN 43B

Water Right Number: 43B 30109304 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: ACTIVE

Owners: DAVID STANLEY
PO BOX 1377
LIVINGSTON, MT 59047 1377

JEAN KEFFELER
PO BOX 1377
LIVINGSTON, MT 59047 1377

Priority Date: DECEMBER 31, 1948

Type of Historical Right: USE

Purpose (use): DOMESTIC

Flow Rate: 35.00 GPM

Volume: 2.75 AC-FT

Households: 1

Maximum Acres: 0.50

Source Name: GROUNDWATER

Source Type: GROUNDWATER

Point of Diversion and Means of Diversion:

| <u>ID</u> | <u>Govt Lot</u> | <u>Qtr Sec</u> | <u>Sec</u> | <u>Twp</u> | <u>Rge</u> | <u>County</u> |
|-----------|-----------------|----------------|------------|------------|------------|---------------|
| 1 | | SENWSW | 34 | 2S | 11E | PARK |

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: WELL

Period of Use: JANUARY 1 TO DECEMBER 31

Place of Use:

| <u>ID</u> | <u>Acres</u> | <u>Govt Lot</u> | <u>Qtr Sec</u> | <u>Sec</u> | <u>Twp</u> | <u>Rge</u> | <u>County</u> |
|-----------|--------------|-----------------|----------------|------------|------------|------------|---------------|
| 1 | 0.50 | | SENWSW | 34 | 2S | 11E | PARK |

Total: 0.50